IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No.62 of 2007.

Judgment reserved on:18.9.2007

Date of decision: 20.9.2007

Smt.Monica Vij ....Appellant

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Appellant: Mr.R.K. Gautam, Advocate with Mr.Naveen Bhardwaj, Advocate.

For the respondents: Mr.Ashutosh Burathoki, Dy.A.G. for respondent No.1.
Mr.Adarsh K.Vashishta, counsel for respondents No.2&3.

Deepak Gupta, J.

The appellant by means of this LPA has challenged the judgment of the learned Single Judge of this Court dismissing the writ petition filed by her.

The brief facts necessary for disposal of the present case are that the appellant herein is the owner of a Hotel known as "Shangrila" at Dalhousie. She had submitted a building plan for sanction to the Municipal Council, Dalhousie. On 15th March, 1990 she was informed by the President, Municipal Council, Dalhousie

that the matter is to be placed before the Committee and that the appellant would have to file an affidavit that construction will remain below the road level. The appellant was however informed that the plan stands sanctioned in anticipation of the Committee's approval.

According to the Municipal Council though the plan was sanctioned, the appellant did not raise any construction within the statutory period of two years and therefore the sanction lapsed. In August, 2000 the appellant wrote another letter to the President of the Municipal Council in which she prayed that the already sanctioned plan may be revalidated. The letter reads as follows:

> "We had applied for proposed addition and alteration in Hotel Shangrila, The Mall, Dalhousie. The same stood sanctioned from the Committee. But due to certain unavoidable reasons the same could not be done.
> You are kindly requested to revalidate the same plan so that we can undertake the work.
> Thanking you,
>
> Yours faithfully,
> Sd/-
> Monica Vij"

The President recommended the case of the appellant for approval. Thereafter, the Executive Officer informed the appellant that her case had been considered by the Municipal Council and it had been resolved that she should first get the land use permission from the Town and Country Planning Department.

Admittedly, the appellant did not apply for any approval of the Town and Country Planning Department. According to the respondent Municipal Council the appellant started raising construction. A written complaint was sent by the Municipal Engineer of the Council on 20.11.2000 to the Executive Officer in this regard. The Executive Officer issued notice on 22.11.2000 asking the appellant to remove the unauthorized construction within 15 days. The appellant in her reply dated 6.12.2000 took up a plea that she had not raised any construction but was only

making repairs. The officials of the Municipal Council again re-inspected the spot and as per reports dated 22.12.2000 and 6.1.2001 found that the appellant had raised a false plea and that she was in fact raising construction. Despite various notices being sent to her the appellant did not stop the unauthorized construction and on 5th July, 2001 the Municipal Council ordered the appellant to remove the unauthorized construction failing which the same would be demolished by the Council at her cost.

The aforesaid order of the Municipal Council was challenged by the present appellant by filing an appeal under the provisions of the H.P. Municipal Act to the learned District Judge, Chamba. This appeal was dismissed by the learned District Judge after holding that it was evident from the record that the appellant was raising unauthorized new construction of brick masonry above the ground floor and providing RCC slab on second floor at her hotel Sangrila, Dalhousie without prior sanction and complying with the provisions of the Act and bye-laws. Thereafter, the appellant filed CWP No.751 of 2002 for quashing the order of the Municipal Council and the judgment of the learned District Judge. The learned single Judge has come to the conclusion that the sanction of 1990 could not remain in force for more than 10 years and had lapsed. The appellant was bound to apply for fresh sanction and could not have raised any building without obtaining sanction.

The main argument of Sh.R.K.Gautam, learned senior counsel appearing on behalf of the appellant is that the appellant was only repairing her structure and even if there is some construction which is beyond the sanctioned plan the same can be regularized/compounded if it is within the permissible limits. He has cited an order dated 24.10.2005 passed in **Rajesh Atri vs. The Secretary, Local Self Govt. and others, CWP No.22 of 2004.** We have gone through the said order. The said order does not lay down any proposition of law but has been passed in the peculiar facts and circumstances of the said case.

In the present case it is clear that the appellant had not raised any construction pursuant to the sanction plan 1990. This is evident from the letter Annexure P-2 quoted hereinabove. The appellant has admitted that due to certain unavoidable reasons she could not raise the construction. If the construction had not been raised there is no question of carrying out repairs to the said construction.

We also find that the appellant has disobeyed the law with impunity. Despite various notices being sent to her to stop construction she did not care to stop the construction and carried on the construction as if there was no law in existence. Such a person cannot claim any discretionary relief.

Dalhousie is a beautiful hill station and the beauty of Dalhousie is being marred by unauthorized and unregulated construction. The learned Single Judge has rightly held that the appellant was required to obtain fresh sanction from the Town and Country Planning Department as well as Municipal Council, Dalhousie before raising any construction after the lapse of the earlier sanction granted in the year 1990.

In view of the above discussion, we are clearly of the view that there is no merit in the appeal which is accordingly dismissed.

(Deepak Gupta),
Judge

September 20 , 2007 **(V.K. Ahuja)**
PV **Judge**